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James G. Prather

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05/17/2006

TERRELL P. LEWIS

UNIT #8

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EXAMINER

SWENSON, BRIAN L

ART UNIT

PAPER NUMBER

3618

DATE MAILED: 05/17/2006

Please find below and/or attached an Office communication concerning this application or proceeding.



### DETAILED ACTION

1. Acknowledgment is made of the Request for Continued Examination (RCE) and the amendment entered on 21 February 2006 where:

- a. Claims 1, 2, 11, 15, 16 and 23 have been amended.

An action on the merits of claims 1-23 follows below.

### *Claim Objections*

2. Claims 15-21 are objected to because of the following informalities:

- ***“conventional” shopping carts*** have not been positively recited, leaving it unclear and indefinite as to what is encompassed by the comparison with the claimed shopping cart and the “conventional shopping cart”. Further the use of quotes around the word—conventional—further add indefiniteness. The word conventional is known in the art; the use of quotes typically indicates an *ad hoc* or limited definition. In this case the use of quotes cause confusion, and it is unclear what “conventional” refers to in this case. If two carts have similar wheels are they considered “conventional”?

The examiner suggests removing the quotes around the word conventional.

- Clarification is requested for the limitation, “a handle member including two *horizontally* spaced apart, substantially parallel rods attached to said handle member...”

The “horizontally spaced” limitation in the claim is correct as written *per se*, but the examiner suggests the language: “a handle member including two *vertically* spaced apart, substantially parallel rods attached to the handle member...” which is more

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representative of claimed invention. Figure 2, of the instant drawings, shows element 150 with a slight inclination giving the two parallel rods (elements 162,164) a slight horizontal separation. It is believed that the word "vertical" would a more clear description and would be in accord with the instant specification; for example language found in the in the abstract provides, "a pair of vertically spaced apart horizontal hinge rods are mounted to the handle member." See also claim 11.

Appropriate correction is required.

***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 15-21 and 23 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 15 recites the limitation "the lower of the two horizontally spaced rods" in line 14 of the claim. There is insufficient antecedent basis for this limitation in the claim (see Claim Objections, above, for the examiner's suggestion to correct this rejection).

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claims 1 and 22, are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,507,507 issued to Davidson.

Davidson, teaches in Figures 1-9 and respective portions of the specification of a: shopping cart (10) including:

a wheeled base (rails 22,24 and casters 14) having forward and rear portions;

a container (18B) supported by the base;

a gate (58) member pivotably attached (gate is pivotally attached to elements 64 which is connected) to a handle assembly (elements 28 and 26) mounted to the base rearwardly of the container and functionally arranged therewith to act as a closure for the rear of the container;

a pedestal (36) formed on the base for supporting the container thereon,

said pedestal being secured to the base at a location between the forward and rearward ends of the base (Figure 1);

said container being secured on the pedestal at a fixed location so that the lower rear of the container is disposed forwardly of the rear of the base (Figure 1).

In regards to claim 22, see Figure 3.

5. Claim 1 and 22 are rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Patent No. 6,644,674 issued to Simard.

Simard, teaches in Figures 1-3 and respective portions of the specification of a shopping cart (10) including:

a wheeled base (11 and casters 12) having forward and rear portions;

a container (23) supported by the base;

a gate (38) member pivotably attached (40) to a handle assembly (19) mounted to the base (handle assembly is integral with element 18, which is mounted to base 11) rearwardly of the container and functionally arranged therewith to act as a closure for the rear of the container (Figure 1);

a pedestal (elements 20 and 21) formed on the base for supporting the container thereon,

said pedestal being secured to the base at a location between the forward and rearward ends of the base (see Figure 1 where reference numeral 11 points);

said container being secured on the pedestal at a fixed location so that the lower rear of the container is disposed forwardly of the rear of the base (Figure 1).

In regards to claim 22, see Figure 3.

***Allowable Subject Matter***

6. Claims 2-14 objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

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7. Claims 15-21 and 23 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph and Claim Objections, set forth in this Office action.

The primary reason for the indication of allowable subject matter in this case is the inclusion of:

In regards to claim 2: a pedestal for supporting a lower rear portion of a basket for a shopping cart, where the upper rear portion of the basket is hung from a handle member extending upward from a base of the shopping cart;

In regards to claims 11 and 15: a shopping cart frame including a handle member with two vertically spaced apart, parallel rods attached to the handle member; a gate member pivotally attached to the lower of the two rods, a pedestal formed on the base for supporting a container, where the rear of the container is closed by the gate member;

in combination with the other elements recited, not found in the prior art of record.

### ***Response to Arguments***

Applicant's arguments filed 27 June 2005 have been fully considered but they are not persuasive in regard to the 35 U.S.C. 112, second paragraph rejection in regards to claims 11 and 15-21. Specifically,

The limitation, "***conventional shopping carts***" is not of proper scope as a, "***conventional shopping carts***" has not been positively recited leaving it unclear and indefinite as to what is encompassed by the comparison with the claimed shopping cart

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and the "conventional shopping cart". Further the use of quotes around the word—conventional—further add indefiniteness. The word conventional is known, the use of quotes typically indicate an *ad hoc* or limited definition. There is no structure recited in the claim language to indicate as to what constitutes a: "***conventional***" ***shopping cart***. If two carts have similar wheels are they considered "conventional"?

As disclosed above the removal of the quotes around the word—conventional—will obviate the Claim Objection, set forth above.

Applicant's arguments, with respect to the rejection(s) of claim(s) 1-22 under 35 USC 102 and 103 have been fully considered and but are moot in view of the new ground(s) of rejection, detailed above.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brian Swenson whose telephone number is (571) 272-6699. The examiner can normally be reached on M-F 9-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christopher Ellis can be reached on (571) 272-6914. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.



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 5/8-06

bls

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Art Unit 3618



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